



State of Utah

**GRIEVANCE
PROCEDURES MANUAL**

July 2010

Career Service Review Office



**STATUTORY PROVISIONS AND
ADMINISTRATIVE RULES OF THE
CAREER SERVICE REVIEW OFFICE**

2010 Edition

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PREFACE

Dear Reader:

This *Grievance Procedures Manual* contains both the statutory provisions of the State Employees' Grievance Procedures and administrative rule provisions of the Career Service Review Office (CSRO).

First, you will find the statutory sections of the Grievance Procedures as contained in Title 67, Chapter 19a, *Utah Code*. The Grievance Procedures include statutory Sections 67-19a-101 through -406.

Next, you will find the CSRO's administrative rule provisions for both the Grievance Procedures and for the CSRO's administrative rule provisions on the Government Records Access Management Act (GRAMA).

In the State's administrative rulemaking process, the letter "R" stands for the word "rule." The number "137" is the CSRO's agency rulemaking number and applies only to the CSRO, not to any other State agency. The middle digit "1" means an entire rule; in this case the "1" refers to the CSRO's first rule which is the Grievance Procedures. There are 22 individual sections to the CSRO's Grievance Procedures; these are numbered sequentially "1" through "22." For example, R137-1-12 refers to the CSRO's administrative rule section on "Employees' Rights," while R137-1-18 concerns "Procedural Matters" for hearings.

R137-2-1 through -11 contains the CSRO's rule provisions pertaining to the GRAMA.

Finally, the CSRO *Grievance Manual* contains two items in an appendix. The first item is an outline of time periods for the Grievance Procedures. The second is a glossary of terms commonly used during administrative hearings. Material in the appendix is neither statutory nor administrative rule provision. This material is placed in the CSRO Grievance Manual only as helpful information for readers.

Readers may contact the CSRO's Administrative Legal Secretary at 801-538-3048 and the Administrator at 801-538-3047 with questions or for information about the Grievance Procedures.

STATUTORY SOURCES PERTAINING TO THE GRIEVANCE AND APPEAL PROCEDURES

State Personnel Management Act

Section 67-19-12(4)(ix) - the setting of salary ranges may not be grieved.

Section 67-19-18(1) through (5) - demotion and dismissal criteria.

Section 67-19-18(6) - reduction in force procedures.

Section 67-19-30 - jurisdiction over various grievance matters

Section 67-19-31 - DHRM's classification grievance procedures.

Section 67-19-32 - State's complaint procedure for legally prohibited practices relating to civil rights issues of discrimination.

Grievance and Appeal Procedures

Sections 67-19a-101 through -408

Section 67-5-12 - procedures for appeals from demotion and dismissal by Attorney General Career Service Attorneys.

Utah Administrative Procedures Act

Sections 63G-4-101 – 601

Other Pertinent Statutory Provisions

Section 34A-5-101 - Utah Antidiscrimination Act

Section 52-4-101 - Open and Public Meetings

Section 63G-2-101 - GRAMA

Section 67-21-1 - Utah Protection of Public Employees Act (Whistleblowers Act)

Section 67-16-1 - Public Officers' and Employees' Ethics Act

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STATUTORY PROVISIONS OF THE GRIEVANCE PROCEDURES

PART 1 GENERAL PROVISIONS

67-19a-101. Definitions.

As used in this chapter:

- (1) "Administrator" means the person appointed under Section 67-19a-201 to head the Career Service Review Office.
- (2) "Career service employee" means a person employed in career service as defined in Section 67-19-3.
- (3) "Employer" means the state of Utah and all supervisory personnel vested with the authority to implement and administer the policies of an agency.
- (4) "Grievance" means:
 - (a) a complaint by a career service employee concerning any matter touching upon the relationship between the employee and the employer; and
 - (b) any dispute between a career service employee and the employer.
- (5) "Office" means the Career Service Review Office created under Section 67-19a-201.
- (6) "Supervisor" means the person:
 - (a) to whom an employee reports; or
 - (b) who assigns and oversees an employee's work.

67-19a-101.5. Transition.

- (1) The board that is repealed by Laws of Utah 2010, Chapter 249, on July 1, 2010, shall:
 - (a) continue to exist until June 30, 2011, with the same membership, duties, and procedures only for the purpose of addressing a grievance submitted to the employee's supervisor on or before June 30, 2010; and
 - (b) apply the law in effect on June 30, 2010 to a grievance described in Subsection (1)(a).
- (2) The amendments to this chapter made by Laws of Utah 2010, Chapter 249, apply only to a grievance submitted to the employee's supervisor on or after July 1, 2010.

PART 2 CAREER SERVICE REVIEW OFFICE

67-19a-201. Career Service Review Office created – Appointment of an Administrator – Reporting – Qualifications.

- (1) There is created a Career Service Review Office.
- (2) (a) The governor shall appoint, with the consent of the Senate, an administrator of the office.
- (b) The administrator shall have demonstrated an ability to administer personnel policies in performing the duties specified in this chapter.

67-19a-202. Powers -- Scope of Authority.

- (1) (a) The office shall serve as the final administrative body to review a grievance from a career service employee and agency of decision regarding:
 - (i) a dismissal;
 - (ii) a demotion;
 - (iii) a suspension;
 - (iv) a reduction in force;
 - (v) a dispute concerning abandonment of position;
 - (vi) a wage grievance if an employee is not placed within the salary range of the employee's current position;
 - (vii) a violation of a rule adopted under Chapter 19, Utah State Personnel Management Act; or
 - (viii) except as provided by Subsection (1)(b)(iii), equitable administration of the following benefits:
 - (A) long-term disability insurance;
 - (B) medical insurance;
 - (C) dental insurance;
 - (D) post-retirement health insurance;
 - (E) post-retirement life insurance;
 - (F) life insurance;
 - (G) defined contribution retirement;
 - (H) defined benefit retirement; and
 - (I) a leave benefit.

(b) The office may not review or take action on:

- (i) a personnel matter not listed in Subsection (1)(a);
- (ii) a grievance listed in Subsection (1)(a) that alleges discrimination or retaliation related to a claim of discrimination that is a violation of a state or federal law for which review and action by the office is preempted by state or federal law; or
- (iii) a grievance related to a claim for which an administrative review process is provided by statute and administered by:
 - (A) the Utah State Retirement Systems under Title 49, Utah State Retirement and Insurance Benefit Act;
 - (B) the Public Employees' Benefit and Insurance Program under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act; or
 - (C) the Public Employees' Long-Term Disability Program under Title 49, Chapter 21, Public Employees' Long-Term Disability Act.

(2) The time limits established in this chapter supersede the procedural time limits established in Title 63G, Chapter 4, Administrative Procedures Act.

67-19a-203. Rulemaking authority.

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the administrator may make rules governing:
- (a) definitions of terms, phrases, and words used in the grievance process established by this chapter;
 - (b) what matters constitute excusable neglect for purposes of the waiver of time limits established by this chapter;
 - (c) the application for and service of subpoenas, the service and filing of pleadings, and the issuance of rulings, orders, determinations, summary judgments, transcripts, and other legal documents necessary in grievance proceedings;
 - (d) the use, calling, attendance, participation, and fees of witnesses in grievance proceedings;
 - (e) continuances of grievance proceedings;
 - (f) procedures in hearings, unless governed by Title 63G, Chapter 4, Administrative Procedures Act;
 - (g) the presence of media representatives at grievance proceedings;

- (h) procedures for sealing files or making data pertaining to a grievance unavailable to the public; and
 - (i) motions that will assist the parties in meeting the 150-day time limit.
- (2) The rule made under Subsection (1)(i) shall:
- (a) prohibit a party from filing a dispositive motion under Utah Rules of Civil Procedure, Rule 12(b)(6) or Rule 56 before an evidentiary hearing; and
 - (b) authorize a party to file a motion before an evidentiary hearing to:
 - (i) dismiss for lack of authority to review the grievance under Utah Rules of Civil Procedure, Rule 12(b)(1) or Rule 12(b)(2); or
 - (ii) limit the introduction of evidence.

67-19a-204. Administrator -- Powers.

- (1) In conjunction with any inquiry, investigation, hearing, or other proceeding, the administrator may:
 - (a) administer an oath;
 - (b) certify an official act;
 - (c) subpoena a witness, document, and other evidence; and
 - (d) grant a continuance as provided by rule.
- (2) (a) The administrator may:
 - (i) assign qualified, impartial hearing officers on a per case basis to adjudicate matters under the authority of the office;
 - (ii) subpoena witnesses, documents, and other evidence in conjunction with any inquiry, investigation, hearing, or other proceeding; and
 - (iii) upon motion made by a party or person to whom the subpoena is directed and upon notice to the party who issued the subpoena, quash or modify the subpoena if it is unreasonable, requires an excessive number of witnesses, or requests evidence not relevant to any matter in issue.
- (b) In selecting and assigning hearing officers under authority of this section, the administrator shall appoint hearing officers that have demonstrated by education, training, and experience the ability to adjudicate and resolve personnel administration disputes by applying employee relations principles within a large, public work force.

PART 3 GRIEVANCE PROCEDURES

67-19a-301. Charges submissible under grievance procedure.

- (1) This grievance procedure may only be used by career service employees who are not:
 - (a) public applicants for a position with the state's work force;
 - (b) public employees of the state's political subdivisions;
 - (c) public employees covered by other grievance procedures; or
 - (d) employees of state institutions of higher education.
- (2)
 - (a) Whenever a question or dispute exists as to whether an employee is qualified to use this grievance procedure, the administrator shall resolve the question or dispute.
 - (b) The administrator's decision under subsection (2)(a) is reviewable only by the Court of Appeals.
- (3) Any career service employee may submit a grievance based upon a claim or charge of injustice or oppression, including dismissal from employment, resulting from an act, occurrence, omission, or condition for solution through the grievance procedures set forth in this chapter.

67-19a-302. Levels of procedure.

- (1) A career service employee may grieve the issues specified under Subsection 67-19a-202(1)(a) to all levels of the grievance procedure described in Section 67-19a-402.
- (2)
 - (a) A career service employee may grieve all other matters only to the level of the department head.
 - (b) The decision of the department head on a matter Subsection (2)(a) is final and may not be advanced to the office.

67-19a-303. Employees' rights in grievance procedure.

- (1) For the purpose of processing a grievance, a career service employee may:
 - (a) obtain assistance by a representative of the employee's choice to act as an advocate at any level of the grievance procedure;
 - (b) request a reasonable amount of time during work hours to confer with the representative and prepare the grievance; and
 - (c) call other employees as witnesses at a grievance hearing.

- (2) The state shall allow employees to attend and testify at the grievance hearing as witnesses if the employee has given reasonable advance notice to the employee's immediate supervisor.
- (3) No person may take any reprisals against any career service employee for use of grievance procedures specified in this chapter.
- (4)
 - (a) The employing agency of an employee who files a grievance may not place grievance forms, grievance materials, correspondence about the grievance, agency and department replies to the grievance, or other documents relating to the grievance in the employee's personnel file.
 - (b) The employing agency of an employee who files a grievance may place records of disciplinary action in the employee's personnel file.
 - (c) If any disciplinary action against an employee is rescinded through the grievance procedures established in this chapter, the agency and the Department of Human Resource Management shall remove the record of the disciplinary action from the employee's agency personnel file and central personnel file.
 - (d) An agency may maintain a separate grievance file relating to an employee's grievance, but shall discard the file after three years.

PART 4 PROCEDURAL STEPS TO BE FOLLOWED BY AGGRIEVED EMPLOYEE

67-19a-401. Time limits for submission and advancement of grievance by aggrieved employee – Voluntary termination of employment – Group grievances.

- (1) Subject to the provisions of Part 3, Grievance Procedures, and the restrictions contained in this part, a career service employee may have a grievance addressed by following the procedures specified in this part.
- (2) The employee and the person to whom the grievance is directed may agree in writing to waive or extend grievance steps specified under Subsection 67-19a-402(1), (2), or (3) or the time limits specified for those grievance steps, as outlined in Section 67-19a-402.
- (3) Any writing made pursuant to Subsection (2) must be submitted to the administrator.
- (4) Except as provided under Subsection (6), if the employee fails to advance the grievance to the next procedural step within the time limits established in this part:
 - (a) the employee waives the right to advance the grievance or to obtain judicial review of the grievance; and
 - (b) the grievance is considered to be settled based on the decision made at the last procedural step.

- (5) (a) An employee may submit a grievance for review under this chapter only if the employee submits the grievance:
 - (i) within 20 working days after the event giving rise to the grievance; or
 - (ii) within 20 working days after the employee has knowledge of the event giving rise to the grievance.
- (b) Notwithstanding Subsection (5)(a), an employee may not submit a grievance more than one year after the event giving rise to the grievance.
- (6) The provisions of Subsections (4) and (5)(a) do not apply if the employee meets the requirements for excusable neglect established by rule.
- (7) A person who has voluntarily terminated the person's employment with the state may not submit a grievance after the person has terminated the employment.
- (8) (a) If several employees allege the same grievance, the employees may submit a group grievance by following the procedures and requirements of this chapter.
- (b) In submitting a group grievance, each aggrieved employee shall sign the grievance.
- (c) The administrator may not treat a group grievance as a class action, but may select one aggrieved employee's grievance and address that grievance as a test case.

67-19a-402. Procedural steps to be followed by aggrieved employee.

- (1) (a) A career service employee who has a grievance shall submit the grievance in writing to:
 - (i) the employee's supervisor; and
 - (ii) the administrator.
- (b) Within five working days after receiving a written grievance, the employee's supervisor may issue a written decision on the grievance.
- (2) (a) If the employee's supervisor fails to respond to the grievance within five working days or if the aggrieved employee is dissatisfied with the supervisor's written decision, the employee may advance the written grievance to the employee's agency or division director within 10 working days after the expiration of the period for response or receipt of the written decision, whichever is first.
- (b) Within five working days after receiving the written grievance, the employee's agency or division director may issue a written response to the grievance stating the decision and the reasons for the decision.

- (3) (a) If the employee's agency or division director fails to respond to the grievance within five working days after its submission, or if the aggrieved employee is dissatisfied with the agency or division director's written decision, the employee may advance the written grievance to the employee's department head within 10 working days after the expiration of the period for decision or receipt of the written decision, whichever is first.
 - (b) Within 10 working days after the employee's written grievance is submitted, the department head may issue a written response to the grievance stating the decision and the reasons for the decision.
 - (c) The decision of the department head is final in all matters except those matters that the office may review under the authority of Part 3, Grievance Procedures.
- (4) If the written grievance submitted to the employee's department head meets the subject matter requirements of Section 67-19a-202 and if the the employee's department head fails to respond to the grievance within 10 working days after submission, or if the aggrieved employee is dissatisfied with the department head's written decision, the employee may advance the written grievance to the administrator within 10 working days after the expiration of the period for decision or receipt of the written decision, whichever is first.

67-19a-403. Advancement of grievance to administrator – Initial hearing.

- (1) At any time after a career service employee submits a written grievance to the administrator under Subsection 67-19a-402(4), the administrator may attempt to settle the grievance informally by conference, conciliation, and persuasion with the employee and the agency.
- (2) (a) When an employee advances a grievance to the administrator under Subsection 67-19a-402(4), the administrator shall initially determine:
 - (i) whether the employee is a career service employee and is entitled to use the grievance system;
 - (ii) whether the office has authority to review the grievance; and
 - (iii) whether the employee has been directly harmed.
- (b) In order to make the determinations required by Subsection (2)(a), the administrator may:
 - (i) hold an initial hearing, where the parties may present oral arguments, written arguments, or both; or
 - (ii) conduct an administrative review of the file.
- (3) (a) If the administrator holds an initial hearing, the administrator shall issue a written decision within 15 days after the hearing is adjourned.

- (b) If the administrator chooses to conduct an administrative review of the file, the administrator shall issue the written decision within 15 days after the administrator receives the grievance.

67-19a-404. Evidentiary hearing.

- (1) If the administrator determines that the office has authority to review the grievance, the administrator shall:
 - (a) appoint a hearing officer to adjudicate the grievance; and
 - (b) set a date for the evidentiary hearing that is either:
 - (i) not later than 30 days after the date the administrator determines that the office has authority to review the grievance; or
 - (ii) at a date:
 - (A) agreed upon by the parties and the administrator; and
 - (B) not greater than 150 days after the date the administrator determines that the office has authority to review the grievance.
- (2) After the date for the evidentiary hearing has been set, the administrator or assigned hearing officer may grant each party one extension of reasonable length for extraordinary circumstances as determined by the administrator or assigned hearing officer.
- (3) Notwithstanding Section 63G-4-205, and in order to accommodate the 150-day time limit, the administrator may only allow a motion for discovery for production of documents, records, and evidence under Utah Rules of Civil Procedure, Rule 34.

67-19a-405. Prehearing conference.

- (1) The administrator may require the presence of each party, the representatives of each party, and other designated persons at a prehearing conference.
- (2) At the conference, the administrator may require the parties to:
 - (a) identify which allegations are admitted and which allegations are denied;
 - (b) submit a joint statement detailing:
 - (i) stipulated facts that are not in dispute;
 - (ii) the issues to be decided; and
 - (iii) applicable laws and rules;

- (c) submit a list of witnesses, exhibits, and papers or other evidence that each party intends to offer as evidence; and
 - (d) confer in an effort to resolve or settle the grievance.
- (3) At the conclusion of the prehearing conference, the administrator may require the parties to prepare a written statement identifying:
- (a) the items presented or agreed to under Subsection (2); and
 - (b) the issues remaining to be resolved by the hearing process.
- (4) The prehearing conference is informal and is not open to the public or press.

67-19a-406. Procedural steps to be followed by aggrieved employee – Hearing before hearing officer – Evidentiary and procedural rules.

- (1) (a) The administrator shall employ a certified court reporter to record the hearing and prepare an official transcript of the hearing.
- (b) The official transcript of the proceedings and all exhibits, briefs, motions, and pleadings received by the hearing officer are the official record of the proceeding.
- (2) (a) The agency has the burden of proof in all grievances.
- (b) The agency must prove the agency's case by substantial evidence.
- (3) (a) The hearing officer shall issue a written decision within 20 working days after the hearing is adjourned.
- (b) If the hearing officer does not issue a decision within 20 working days, the agency that is a party to the grievance is not liable for any claimed back wages or benefits after the date the decision is due.
- (4) The hearing officer may:
 - (a) not award attorneys' fees or costs to either party;
 - (b) close a hearing by complying with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings;
 - (c) seal the file and the evidence produced at the hearing if the evidence raises questions about an employee's character, professional competence, or physical or mental health;
 - (d) grant continuances according to rule; and
 - (e) decide a motion, an issue regarding discovery, or another issue in accordance with this chapter.

CAREER SERVICE REVIEW OFFICE'S ADMINISTRATIVE RULES

R137. Career Service Review Office, Administration.

R137-1. Grievance Procedure Rules.

R137-1-1. Authority and Purpose of Rule for Grievance Procedures.

- (1) The authority for the rule on these grievance procedures is found at Section 67-19a-203.
- (2) This rule establishes official procedures and standardized practices for administering these grievance procedures.

R137-1-2. Definitions.

Terms defined in Section 63G-4-103 of the *Utah Administrative Procedures Act* (UAPA) are incorporated by reference within this rule. In addition, other terms which are used in this rule are defined below:

"Abandonment of Grievance" means either the voluntary withdrawal of a grievance or the failure by an employee to properly pursue a grievance through these grievance procedures.

"Administrative Review of the File" means an informal adjudicative proceeding according to Subsection 67-19a-403(3)(b).

"Administrator" means the incumbent in the position defined at Subsection 67-19a-101(1).

"Affidavit" means a signed and sworn statement offered for consideration in connection with a grievance proceeding.

"Affirmative Defense" means a responsive answer asserting facts in addition to those alleged that are legally sufficient to rebut asserted allegations.

"Appeal" means a formal request to a higher level of review of an unacceptable lower level decision.

"Appointing Authority" means the officer, board, commission, person or group of persons authorized to make appointments on personnel/human resource management matters in their respective agency.

"Burden of Moving Forward" means a party's obligation to present evidence on a particular issue at a particular time. The burden of moving forward may shift back and forth between the parties based on certain legal principles.

"Burden of Proof" means the obligation to prove affirmatively a fact or set of facts at issue between two parties. If proven, the opposing party then has a burden of proving any affirmative defense.

"CSRO" means the agency of state government that statutorily administers these grievance procedures according to Sections 67-19a-101 through 67-19a-406.

"Closing Argument" means a party's final summation of evidence and argument, which is presented at the conclusion of the hearing.

"Consolidation" means the combining of two or more grievances involving the same controversy for purposes of holding a joint hearing, proceeding, or administrative review.

"Continuance" means an authorized postponement or adjournment of a hearing until a later date, whether the date is specified or not.

"Declaratory Order" means a ruling that is explanatory in purpose; it is designed to clarify what before was uncertain or doubtful. A declaratory order constitutes a declaration of rights between parties to a dispute and is binding as to both present and future rights. It is an administrative interpretation or explanation of a right, statute, order or other legal matter under a statute, rule, or an order.

"Default" means an omission of or untimely failure to take or perform a required act in the processing of a grievance. It is the failure to discharge an obligation which results in a forfeiture.

"Deposition" means a form of discovery in which testimony of a witness is given under oath, subject to cross-examination, and recorded in writing, prior to the hearing.

"Discovery" means the prehearing process whereby one party may obtain from the opposing party, or from other individuals or entities, information regarding the witnesses to be called, the documents and exhibits to be used at the hearing, and the facts and information about the case.

"Evidentiary Hearing" means a proceeding of relative formality, though much less formal than a trial, in which witnesses may be heard and evidence is presented and considered. Specific issues of fact and of law are tried. Afterwards, ultimate conclusions of fact and of law are set forth in a written decision or order.

"Excusable Neglect" means the exercise of due diligence by a reasonably prudent person and constitutes a failure to take proper steps at the proper time, not in consequence of the person's own carelessness, inattention, or willful disregard in the processing of a grievance, but in consequence of some unexpected or unavoidable hindrance or accident.

"Extraordinary Circumstances" means factors not normally incident to or foreseeable during an administrative proceeding. It includes circumstances beyond a party's control that normal prudence and experience could not foresee, anticipate or provide for.

"File" means to submit a document, grievance, petition, or other paper to the CSRO as prescribed by these rules. The term "file" includes faxing and E-mailing.

"Filing Date" means the day that a document, grievance, petition, or other paper is recorded as having been received by the CSRO.

"Grievance Procedures" mean the grievance and appeal procedures codified at Sections 67-19a-101 through 67-19a-406 and promulgated through this rule.

"Grievant" means the person or party advancing one or more issues as a petitioner through these grievance procedures to the evidentiary/step 4 level.

"Group Grievance" means a grievance submitted and signed by two or more aggrieved employees. The term does not include "class action."

"Hearing" means the opportunity to be heard or present evidence in an administrative proceeding.

"Hearing Officer" means an impartial trier of facts appointed by the CSRO administrator and assigned to decide a particular grievance case at the evidentiary/step 4 level.

"Hearsay Evidence" means evidence not based upon a witness's personal knowledge as a direct observer of an event. Rather, hearsay evidence stems from the repetition of what a witness heard another person say. Hearsay's value rests upon the credibility of the declarant. Hearsay is a statement made outside of the hearing that is offered as evidence of the truth of matters asserted in the hearing.

"Initial Hearing" means a hearing conducted by the administrator to make an initial determination regarding timeliness, authority, jurisdiction, direct harm, standing and eligibility to advance a grievance issue to the evidentiary/step 4 level.

"Issuance" means the date on which a decision, order or ruling is signed and dated; it is not the date of mailing, or the date of the mailing certificate, nor the postal date. Date of issuance is the date specified according to Subsection 63G-4-401, of the UAPA.

"Joint Hearing" means the uniting of two or more grievances involving the same, similar, or related circumstances or issues to conduct a single hearing; also see "Consolidation."

"Jurisdiction" means the legal right and authority to hear and decide issues and controversies.

"Management Representative" means a person of managerial or supervisory status who is not subject to exclusion. Legal counsel is not included within the meaning of the term.

"Motion" means a request offered verbally or in writing for a ruling or to take some action.

"Motion to Dismiss" means a motion requesting that a grievance or appeal be dismissed because it does not state a claim for which the CSRO provides a remedy, or is in some other way legally insufficient.

"Notice" and "Notification" mean a proper written notice to the parties involved in a grievance procedural hearing or conference, setting forth date, time, location, and the issue to be considered.

"Pleadings" mean the formal written allegations of the parties that set forth their respective claims and defenses.

"Presiding Hearing Officer" means either the Administrator or designated evidentiary/step 4 hearing officer.

"Pro Se" means in one's own behalf. A person is represented pro se in an administrative proceeding when acting without legal counsel or other representation.

"Quash" means to cancel, annul, or vacate a subpoena.

"Relevant" means directly applying to the matter in question; pertinent, germane. It is evidence that tends to make the existence of any facts more probable or certain than they would be without the evidence; and tending to prove the precise fact at issue.

"Remand" means to send back, as for further deliberation and judgment, to the presiding official or other tribunal from which a grievance was appealed.

"Standard of Proof" means the evidentiary standard, which in CSRO adjudications is the substantial evidence standard.

"Stay" means a temporary suspension of a case or of some designated proceeding within the case. A stay is different than a continuance or extension of time and can only be granted when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

"Submit" means to commit to the discretion of another; to present for determination.

"Subpoena" means a formal legal document issued under authority to compel the appearance of a witness at an administrative proceeding, the disobedience of which may be punishable as a contempt of court.

"Subpoena Duces Tecum" means a formal legal document issued under authority to compel specific documents, books, writings, papers, or other items.

"Substantial Evidence" means evidence possessing something of substance and relevant consequence, and which furnishes substantial basis of fact from which issues tendered can be reasonably resolved. It is evidence that a reasonable mind might accept as adequate to support a conclusion, but is less than a preponderance.

"Summary Judgment" means a ruling made upon motion by a party or the presiding hearing officer when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only a question of law is involved. The motion may be directed toward all or part of a claim or defense.

"Transcript" means an official verbatim written record of an adjudicative proceeding or any part thereof, which has been recorded and subsequently transcribed by a certified court reporter.

"UAPA" means the Utah Administrative Procedures Act found at Sections 63G-4-102 through 63G-4-601.

"Withdraw" means to recall or retract a grievance from further consideration under these grievance procedures.

"Witness Fee" means an appearance fee and may also include a mileage rate established by statutory provision pursuant to Section 21-5-4.

"Working Days" means for purposes of the time periods for filing a grievance, advancing an appeal or responding to an employee's grievance or appeal, all days except Fridays, Saturdays, Sundays and recognized State holidays.

R137-1-3. Classification Jurisdiction.

The CSRO and the CSRO hearing officers have no jurisdiction over classification and reclassification grievances, appeals, and complaints nor over position schedule assignments, according to Section 67-19-31 and Subsections 67-19a-202(1)(a) and 67-19a-302(1), and Section R477-4-4.

R137-1-4. Complaints From Applicants.

- (1) A public applicant for a position with the state's work force has no standing to submit a grievance and is precluded from using these grievance procedures, according to Subsection 67-19-16(6).
- (2) A public applicant who alleges a violation of a legally prohibited practice based upon race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, is directed to Section R137-1-5 of these grievance procedures.

R137-1-5. Discrimination: Legally Prohibited Practices.

- (1) **Discrimination Claims.** Claims alleged to be based upon a legally prohibited practice as set forth in Section 34A-35-106, including employment discrimination on the basis of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, are not admissible under these grievance procedures. The CSRO and CSRO hearing officers have no jurisdiction over the preceding claims.
- (2) **Processing Discrimination Complaints.** A public applicant, a probationary employee, a career service employee, or an exempt employee who alleges a violation of a legally prohibited practice pursuant to Section 34A-35-106, may file a timely complaint with the individual's respective department head. If the individual is not satisfied with the department head's decision, or if the decision is not rendered within ten working days after submission of the complaint, the individual may then file a complaint with the Utah Antidiscrimination Division pursuant to Section 67-19-32.
- (3) **Filing Discrimination Complaints.** Employees and applicants desiring to file a legally prohibited discrimination complaint may contact the Utah Anti-Discrimination Division.

R137-1-6. Filing Procedure.

The submission of correspondence, pleadings, grievance materials, and legal documents is subject to the following provisions:

- (1) Filing/Receipt. Papers to be filed with the CSRO or the administrator are deemed filed on the date actually received, and are so date-stamped. The date on which papers are received and date-stamped is regarded as the date of filing.
- (2) Time Periods. All papers, memoranda, petitions, grievances, pleadings, briefs, exhibits, and written motions to be filed with the administrator must be filed in the Career Service Review Office, 1120 State Office Building, Capitol Hill, Salt Lake City, Utah 84114-1561, within the time limits prescribed either by law, by these rules, or by order of the administrator or by the designated CSRO hearing officer.
 - (a) All filing dates are based upon the CSRO's working days.
 - (b) Papers must be signed by the person filing the paper or by the person's authorized representative.
 - (c) Documents being submitted are to contain the name, business address, and telephone number of the representative, if a party or person is being represented.
 - (d) Copies of all filed papers shall be served upon the appropriate opposing party or person to grievance proceedings, with notice of service given to the administrator.
 - (e) Notice to a designated representative constitutes notice to the representative's client.
 - (f) Notice to an employee who is not represented shall be served at the address specified on the employee's statement of grievance or correspondence, or in the absence of such specification, at the last mailing address shown in the employing agency's personnel file.

R137-1-7. Subpoenas.

Subsection 63G-4-205(2) of the UAPA is incorporated by reference.

- (1) Subpoena Power. Pursuant to Subsection 67-19a-204(2)(a)(ii), the administrator may issue subpoenas to witnesses and may obtain documents or other evidence in conjunction with any inquiry, investigation, hearing, or other proceedings.
 - (a) The aggrieved employee has the right to require the production of books, papers, records, documents and other items pertinent to the facts at issue that are within the control of the agency against which the grievance is lodged, and which are not held to be protected or privileged by law. Affidavits and ex parte statements offered during a hearing may be received and considered by the CSRO hearing officer.

- (b) A person receiving a subpoena issued by the CSRO will find the title of the proceeding posted thereon, and the person to whom it is directed shall be compelled to attend and give testimony. A subpoena duces tecum may be used to produce designated books, or other items at a specified time and place when these items are under an agency's or a person's control.
 - (c) A request by counsel or a party's representative to issue a subpoena must be reasonable and timely. At least five full working days' notice prior to a scheduled hearing must be given to the administrator, not counting preparation and delivery time. The requesting party shall simultaneously notify the opposing party of the request.
 - (d) The original of each subpoena is to be presented to the person named therein, and a copy shall be issued to the counsel or representative of each party.
- (2) Service of Subpoenas. Service of subpoenas shall be made by the requesting party delivering the subpoena to the person named, unless the CSRO is requested to deposit the subpoena properly addressed and postage prepaid, with the U.S. Postal Service, or to send it by State Mail and Distribution Services, or to send it by E-mail, or to send it by facsimile transmission, or in any combination.
 - (3) Proof of Service. If service has not been acknowledged by the witness, the server may make an affidavit of service. Failure to make proof of service does not affect the validity of the service.
 - (4) Quashing. Subsection 67-19a-204(2)(a)(iii) governs the quashing of subpoenas by the administrator.

R137-1-8. Notice, Service, Issuance and Distribution.

- (1) Service by the Parties. The parties to a proceeding shall serve upon each other one copy of all pleadings filed with the administrator. Service of a pleading may be made by any of the following: personal delivery, U.S. Postal Service, postage prepaid, State Mail and Distribution Services, facsimile, or E-mail.
 - (a) Pleadings must be accompanied by a certificate of service or an affidavit of mailing, indicating how, where, when and to whom service is being made.
 - (b) It is the duty of a party or person or their representative to notify the administrator and the opposing party or representative in writing of any changes in names, addresses, or telephone numbers.
- (2) Service of Subpoena. Service of subpoenas shall be executed in accordance with Section R137-1-7(2) above.
- (3) Issuance of Decisions and Orders. A CSRO decision, order, ruling or other document shall be considered issued on the date that it is signed by its CSRO originator, rather than on other dates such as the date it is mailed, postmarked, received or distributed.

- (a) All notices, decisions, orders and rulings by the administrator or by a CSRO hearing officer are to be distributed to the counsel or representatives of record and upon any person appearing pro se.
- (b) The CSRO will retain the original notice, decision, order or ruling with the record of the proceedings. Distribution of a CSRO notice, decision, order or ruling is accomplished when any of the following occurs:
 - (i) deposit postage prepaid with the U.S. Postal Service,
 - (ii) deposit with State Mail and Distribution Services,
 - (iii) personal delivery,
 - (iv) facsimile transmission, or
 - (v) E-mail transmission.
- (c) A mailing certificate must be attached to the notice, decision, order or ruling bearing the date of mailing and the names and addresses of those persons to whom the notice, decision, order or ruling is originally distributed.

R137-1-9. Hearing Dates, Continuance/Extension of Time.

- (1) Once the administrator has made an initial determination that the CSRO has authority to review or decide a grievance or appeal, the administrator shall set a date for the evidentiary/step 4 hearing that is:
 - (a) within 30 days of the administrator's determination; or
 - (b) if agreed to by the parties, no more than 150 days from the administrator's determination date.
- (2) Notwithstanding Subsection (a), after the evidentiary hearing date has been set, each party may be granted one continuance or extension of time for the hearing provided there are extraordinary circumstances justifying such continuance or extension. A party desiring an extension of time or a continuance of the evidentiary hearing shall file a written request with the administrator or appointed hearing officer.
 - (a) Every petition for a continuance shall specify the reason for the requested delay.
 - (b) In considering a request for continuance, the administrator or the appointed CSRO hearing officer shall take into account:
 - (i) whether the request was timely made in writing; and
 - (ii) whether the request is based on extraordinary circumstances.

- (3) Inattention or lack of preparation does not constitute extraordinary circumstances justifying a continuance or extension of time of the evidentiary hearing.

R137-1-10. Eligibility to Grieve.

- (1) Standing. Only executive branch career service employees may use these grievance procedures.
 - (a) Pursuant to Subsection 67-19-16(6) and Section 67-19a-301, the CSRO has no jurisdiction over grievance petitions filed by probationary employees, public applicants, exempt employees, noncareer service employees, public employees of the state's political subdivisions, public employees covered by other grievance systems, or employees of state institutions of higher education.
- (2) Questionable Standing. Where a question or dispute exists whether an employee qualifies to use these grievance procedures, such controversies must be resolved through application of R137-1-17 by the administrator. The administrator's determination shall be final and subject to review only in the Utah Court of Appeals for formal adjudications and in the district court for informal adjudications according to Subsections 67-19a-301(2) and 67-19a-403(2)(a)(i), and Sections 63G-4-402 and 63G-4-403 of the UAPA.
- (3) Class Action. Pursuant to Subsection 67-19a-401(8), class action grievances will not be admissible for consideration by the CSRO under these grievance procedures.
- (4) Group Grievance. A group grievance is admissible provided that each aggrieved employee signs the grievance, according to Subsections 67-19a-401(8)(a) and (b).

R137-1-11. Issues Appealable to the Evidentiary/Step 4 Level.

All grievances shall be reviewed to determine:

- (1) Whether the matters or issues raised in a grievance fall within the CSRO's limited jurisdiction as set forth in Subsection 67-19a-202(1)(a), or
- (2) Whether any issues or components of a grievance were satisfactorily resolved at an earlier step in the grievance procedures. Matters or issues resolved at an earlier step in the grievance procedures may not be advanced to the CSRO.

R137-1-12. Employees' Rights.

- (1) Representation. The state does not provide legal counsel or representation to aggrieved employees nor pay the fees for an employee's representation. Also, Subsection 67-19a-406(4)(a) precludes the awarding of fees or costs to an employee's attorney or representative.
- (2) Pro Se Status. A party or person to a grievance proceeding may be represented pro se. When a party or person is represented pro se, the party or person is entitled to request the issuance of subpoenas, directly examine and cross-examine witnesses, make opening and

closing statements, submit documentary evidence, summarize testimony, and in all respects fully present one's own case.

- (3) No Reprisal. Pursuant to Subsection 67-19a-303(3), no appointing authority, director, manager, or supervisor may take action to retaliate against a grievant, a representative, or a witness who participates in or is scheduled to participate in a grievance proceeding.

R137-1-13. Automatic Processing, Waiver, Excusable Neglect, Abandonment of Grievance, Default, Transfer and Stay.

- (1) Automatic Processing. An agency's failure to reply in writing to an aggrieved employee's grievance within the prescribed time period automatically grants the aggrieved employee the right to advance the grievance to the next step of these grievance procedures listed in Section 14 (below). However, pursuant to Subsection 67-19a-401(2), the parties may mutually agree to waive or extend steps 1, 2 or 3 or extend the statutory time period for those steps. Waivers of the statutory time periods by agency management and the aggrieved employee must be in writing and submitted to the administrator.
- (2) Waiver. When the administrator finds that a grievance is one that an agency cannot resolve because of the nature of the grievance, the matter may be waived in writing to a higher level. Steps 1, 2, or 3 may be waived, but not step 4. Any waiver agreed to between the parties must be in writing, dated and submitted to the administrator according to Subsection 67-19a-401(2) and (3).
- (3) Excusable Neglect. The standard of excusable neglect may be offered as a defense to lack of timeliness in processing a grievance or for not appearing at a scheduled proceeding.
 - (a) The administrator or appointed CSRO hearing officer shall determine the applicability of the excusable neglect standard when offered as a defense to lack of timeliness or not appearing at a scheduled proceeding.
 - (b) All questions are to be resolved at the original level of occurrence.
- (4) Abandonment of Grievance. In the event the administrator or CSRO hearing officer determines that a grievance claim has been withdrawn, abandoned, or otherwise neglected beyond either the established time lines or a reasonable period, the matter no longer qualifies for further processing through these grievance procedures. When withdrawal is intended, it should be accomplished in writing.
- (5) Default. An employee who defaults in processing a grievance forfeits further rights granted by these rules and under Section 63G-4-209 of the UAPA, which is incorporated by reference.
- (6) Transfer. The administrator may administratively transfer a grievance case from the aggrieved employee's department to another, more appropriate department to respond as necessary to serve the ends of justice and fairness.

- (7) Stay. Upon written request, the administrator or the CSRO hearing officer may grant a stay of a decision, order, ruling, remedy, or proceeding. However, stays may be granted only when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

R137-1-14. Grievance Procedure Steps.

Persons acting on grievances pursuant to Section 67-19a-402, and in accordance with these rules, shall conduct their filings through the following steps, or levels, of increasing accountability:

Step 1; A written grievance shall be submitted to the employee's immediate supervisor. A standard grievance form is available from the CSRO. Once submitted, the written grievance then becomes a formal complaint necessitating a response. Steps 2 and 3 also necessitate responses within time periods outlined in Section 67-19a-402. Such responses are to be issued by only one supervisor, director, etc. at each step.

Step 2; If the grievance is not resolved at step 1, the employee may advance their grievance to step 2. Step 2 requires the grievance be reviewed by the agency or division director or designee;

Step 3; If the grievance is not resolved at step 2, the employee may advance their grievance to step 3. Step 3 requires the grievance be reviewed by the department head, executive director, commissioner or their designated representative.

Step 4; If the grievance is not resolved at step 3, the employee may advance their grievance to step 4. Step 4 is an evidentiary de novo hearing conducted before a CSRO hearing officer.

The purpose for the above steps, or levels, is to curtail employees from having to submit their grievances to persons in agency management not specified in the above steps or levels. Only the above-listed persons (or their designated representatives) in agency management are authorized to respond to state employees' grievances.

R137-1-15. Procedure for Appealing Disciplinary Action Imposed by Department Head.

- (1) An aggrieved employee who has been suspended without pay, demoted or dismissed by their respective department head (i.e., executive director or commissioner) may appeal the department head's action directly to the CSRO at the evidentiary/step 4 level.
 - (a) An appeal from discipline imposed by the department head is distinguishable from a grievance.
 - (b) A grievance is filed at step 1 and proceeds through steps 2 and 3. Suspensions without pay that are not imposed by a department head shall proceed through the grievance procedures as a grievance.
 - (c) When an appeal from discipline imposed by a department head occurs at the step 3 level, it may be appealed directly to the CSRO at the evidentiary/step 4 level.

- (2) When appealed to the CSRO, the appeal must be filed within 20 working days from the date an aggrieved employee receives written notification from the department head who imposed the disciplinary action.

R137-1-16. Procedure for Appealing Reduction in Force or Abandonment of Position.

An aggrieved employee may appeal a reduction in force or abandonment of position according to the following:

- (1) Upon receiving the department head's final, written decision, the employee may appeal from a reduction in force by filing a written appeal within 20 working days or receipt of the decision with the CSRO.
- (2) An employee separated from employment for abandonment of position may appeal the department head's final written decision by filing a written appeal with the CSRO within 20 working days of receipt of the decision.

R137-1-17. Initial Review by Administrator.

When an employee advances a grievance to the CSRO or directly appeals a department head's decision to the CSRO, the administrator shall make an initial determination of whether the CSRO has authority to review or decide the grievance or appeal. In order to make this determination, the administrator may hold an initial adjudicative hearing in accordance with Subsection 67-19a-403(2) and Section 63G-4-206 or conduct an informal adjudicative review of the file in accordance with Subsection 67-19a-403(2) and Section 63G-4-202 which are incorporated by reference.

- (1) Procedural Issues. The administrator shall make an initial determination of the following: timeliness, direct harm, jurisdiction, standing, eligibility of the issues to be advanced, and any other procedural matters or jurisdictional controversies according to Sections 67-19a-403 and 67-19a-404.
- (2) Determination. The administrator has authority to determine which types of grievances may be heard at the evidentiary/step 4 level. Those types of grievances found to have been resolved at a lower level or those that do not qualify for advancement to the evidentiary/step 4 level are precluded from further consideration in any grievance submitted for CSRO consideration.
- (3) Preclusion. Those types of actions not listed in Subsections 67-19a-202(1)(a) and referenced in Subsection 67-19a-302(1) are precluded from advancement to the evidentiary/step 4 level. When the grievance is precluded from the evidentiary/step 4 level, the matter under dispute shall be deemed as final at the level of the department head/step 3 according to Subsection 67-19a-302(2).
- (4) Reconsideration. A written request for reconsideration may be filed with the administrator. It must be filed within 20 days from the date the administrator issues a decision regarding whether the CSRO has authority to review or decide a grievance or appeal. Section 63G-4-302 of the UAPA incorporated by reference. The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual

findings and legal conclusions of the hearing decision or administrative review of the file decision. New or additional evidence may not be considered.

(5) Judicial Review.

- (a) The aggrieved employee or the responding agency may appeal the administrator's initial adjudicative hearing decision and final agency action to the Utah Court of Appeals within 30 calendar days from the date of issuance according to Subsection 63G-4-401(3)(a) and Section 63G-4-403 of the UAPA which are incorporated by reference.
- (b) The aggrieved employee or the responding agency may appeal the administrator's informal adjudicative decision and final agency action of an administrative review of the file to the district court according to Sections 63G-4-402 and 63-4-404 of the UAPA which are incorporated by reference.

(6) Summary Judgment. The administrator or the (Presiding Officer, *Utah Code Ann.* § 63G-4-103(1)(h)(i)) hearing officer may, pursuant to an administrative review of the procedural facts and circumstances of a grievance case, summarily dispose of a case on the ground that:

- (a) the matter is untimely;
- (b) the grievant has failed to appear at the properly scheduled date, time, and place pursuant to written notice;
- (c) the grievant lacks standing;
- (d) the grievant has withdrawn or otherwise abandoned the grievance;
- (e) the grievant has not been directly harmed;
- (f) the issue grieved does not qualify to be advanced beyond step 3; or
- (g) the requested remedy or relief exceeds the scope of these grievance procedures.

(7) Transcription and Transcript Fees. If a party appeals the administrator's initial adjudicative hearing decision to the Utah Court of Appeals or to the district court, the appealing party is responsible for paying all transcription costs and any transcript fees. The CSRO does not participate in the payment of these fees when appeals are taken to the appellate or trial court. See Utah Rules of Appellate Procedure, Rule 11, and Section 63G-4-403(3), regarding transcript costs from formal adjudications under the UAPA.

R137-1-18. Procedural Matters.

The provisions under this section pertain to initial administrative and evidentiary/step 4 proceedings before the CSRO.

- (1) Purpose. A formal adjudicative proceeding provides a fair and impartial opportunity for the parties to be heard and to present their evidence. The adjudicative process allows the CSRO administrator or the CSRO hearing officer to be completely informed about the case. After having considered the parties' evidence, the CSRO administrator or the CSRO hearing officer may then render a proper determination based upon all of the facts, circumstances, and applicable laws, rules and policies.
- (2) Types of Adjudications. For purposes of Section 63G-4-202 of the UAPA:
 - (a) All initial administrative and evidentiary/step 4 adjudications at the CSRO are formal adjudicative proceedings. Sections 63G-4-205 through 63G-4-209, 63G-4-401 and 63G-4-403 through 63G-4-405 of the UAPA are incorporated by reference within this rule and are applicable to these adjudicative proceedings.
 - (b) An administrative review of the file pursuant to Subsection 67-19a-403(2) is an informal adjudicative proceeding with Sections 63G-4-203, 63G-4-402, and 63G-4-404 of the UAPA incorporated by reference.
- (3) Rules of Evidence/Procedure Inapplicable. The technical rules of evidence and the formal rules of civil procedure as observed in the courts of law are inapplicable to these grievance procedure proceedings, except for the rules of privilege as recognized by law and those specific references to the rules of evidence and procedure as set forth in the UAPA.
- (4) Expelling. The presiding CSRO hearing officer may clear the proceeding of witnesses not under examination and may exclude any unruly or disruptive person.
- (5) Presentation of Case. Each party's representative is given the opportunity to make an opening statement. At the appropriate time, each party's representative is given the opportunity to present evidence. After each party's representative has presented its respective case, the moving party, followed by the responding party, may offer a closing argument. The moving party may offer one rebuttal. Continuous rebuttal is not permissible.
- (6) Objections.
 - (a) When an objection is made as to the admissibility of evidence, the presiding CSRO hearing officer shall note the objection for the record. A ruling is then made by the presiding CSRO hearing officer, or the objection may be taken under advisement to be ruled upon later.
 - (b) The presiding CSRO hearing officer has discretion to exclude inadmissible evidence and to order that cumulative or repetitive evidence be discontinued.

- (c) A party objecting to the introduction of evidence must state the precise grounds of the objection at the time such evidence is offered.
- (7) Marking Exhibits. All exhibits shall be numerically marked and labeled in the order received into evidence, unless previously marked and labeled.
- (8) Motion to Dismiss. The administrator or CSRO hearing officer may, upon a party's motion or upon their own motion, dismiss the grievance or appeal before the CSRO.
- (9) Consolidation of Grievances. Grievances of the same or of a sufficiently similar context may be consolidated by the administrator for purposes of conducting a single or joint hearing.
- (10) Standard of Proof. In all CSRO adjudicative proceedings, the standard of proof is the substantial evidence standard according to Subsection 67-19a-406(2).
- (11) Hearsay Evidence. Hearsay evidence is admissible in CSRO formal adjudicative proceedings as qualified by Subsection 63G-4-208(3) of the UAPA which is incorporated by reference.
- (12) Discovery. The following rule provisions satisfy Section 63G-4-205 of the UAPA on discovery.
 - (a) Discovery shall be limited to that which is relevant and nonprivileged, and for which each party has a substantial, demonstrable need for supporting their respective claims or defenses.
 - (b) At the discretion and approval of the appointed CSRO hearing officer, parties to a dispute may obtain discovery. The CSRO hearing officer has discretion to entertain motions to conduct discovery on a case-by-case basis regarding the following:
 - (i) production of documents, records and things under Utah Rule 34 of Civil Procedure; and
 - (ii) depositions only when a proposed witness is unavailable for giving testimony at a scheduled hearing.
 - (c) No other form of discovery is permitted.
 - (d) Witness lists and copies of exhibits shall be offered by each party to the opposing party and to the presiding CSRO hearing officer during a prehearing/scheduling conference, unless the exchange is scheduled for a later date.
 - (i) Each party's list of witnesses shall contain a brief statement describing the nature of the proposed testimony to be offered by each witness.
 - (ii) A party may not surprise the opposing party with a witness or an exhibit at the hearing which was not made known at the prehearing/scheduling conference, or

by a scheduled exchange date, unless the witness or exhibit is in direct rebuttal to admitted opposing evidence. Also refer to R137-1-7(1)(c).

(13) Page Limitation

- (a) Written motions, pleadings, briefs, and memoranda for all CSRO proceedings may not exceed 20 typed, double-spaced 8-1/2 x 11 inch pages, exclusive of any statement of facts. Reply briefs may not exceed ten pages.
- (b) An application for an exception to the above-stated page limitation provisions must be timely filed in writing, and not more than ten double-spaced 8-1/2 x 11 inch pages in a 12-point font. The applicant party has the burden to offer sufficient justification for requests more than 20 and 10 pages respectively to the CSRO for the granting of any exceptions to the page limitation provision.
- (c) The CSRO may weigh all requests to exceed the page limitation provision based upon the reasonableness and necessity of such requests in light of each case and its circumstances. The CSRO does not automatically grant exceptions simply on the basis of a request.

R137-1-19. Witnesses.

- (1) Availability of State Employees to Testify. An agency shall be responsible for making available any of its employees who are subpoenaed to testify in a hearing.
 - (a) Off Duty Employees. Agencies are not responsible for making available an employee who is: off duty; on sick, annual or other approved leave; or who, for any other reason, is not at work during the time the hearing is in progress.
 - (b) Nondisruption. The parties and their representatives, the administrator and the CSRO hearing officer shall make every effort to avoid disruption to the operation of state government in the calling of state employees to testify in hearings under these grievance procedures.
 - (c) Witness Failure. If a requested witness does not appear at the scheduled hearing, the witness's failure to appear may not necessitate the postponement of any proceedings.
 - (d) Excessive Witnesses. If the number of witnesses requested by a party is excessive, the administrator or the CSRO hearing officer may require the party to justify the request or face denial of part or all of the request.
 - (e) Witness Fees and Mileage Fees. A witness fee and a mileage fee are available to nonstate employees and to state employees who use nonworking hours if their presence is required in a grievance proceeding as a witness according to Section 21-5-4. The CSRO reserves the right to determine on an individual case basis whether it will authorize a travel fee, and to what extent, for an out-of-state witness called by a party.
- (2) Hostile Witnesses. When the presiding CSRO hearing officer determines that a witness is uncooperative or even hostile, the witness may be examined by the party calling that witness

as if under cross-examination. The party calling the witness may, upon showing that the witness was called in good faith but that the testimony is a surprise, proceed to impeach the witness by proof of prior inconsistent statements.

(3) **Exclusion/Sequestering of Witnesses.**

- (a) The presiding CSRO hearing officer may sequester witnesses from the hearing until they are called to testify.
- (b) Witnesses not presently testifying may be sequestered on motion by one or both parties.
- (c) The presiding CSRO hearing officer will counsel the witnesses not to discuss the case with those witnesses who have not yet testified.

(4) **Management Representative.** Prior to every hearing the agency may designate a person to serve as the agency's management representative. The agency's management representative is entitled to remain throughout the hearing to represent the agency at any proceeding even if called to testify. Neither the grievant nor the management representative may be excluded from the hearing.

R137-1-20. Public Hearings.

A CSRO hearing is open to the public unless there are reasonable grounds to justify an executive session for either part or all of a hearing. This provision does not apply to witnesses who are being called to testify according to R137-1-19.

(1) **Closing Hearings.** All grievance procedure hearings shall be open to the public except as follows:

- (a) The administrator or the CSRO hearing officer may close either a portion or an entire hearing based upon reasonable grounds.
- (b) An evidentiary/step 4 hearing may be closed in part or in its entirety when the proceeding involves discussion about a state employee's character, professional competence, or physical or mental health according to Subsection 52-4-5(1)(a)(i) of the Open and Public Meetings statute.

(2) **Sealing Evidence.** The administrator or the CSRO hearing officer may seal the record when appropriate according to Subsection 67-19a-406(4)(c).

(3) **Media Presence.** All hearings at the jurisdictional and evidentiary/step 4 level are open to the media, unless closed pursuant to R137-1-20(1) above. However, television cameras are not permitted at the evidentiary/step 4 proceeding.

(4) **Distribution of Decisions.** Once the grievance process, including all administrative appeals, has been completed and if the agency's decision was sustained, the administrator may provide copies of legal decisions, orders, and rulings to the public upon request. Portions of or entire legal decisions and orders may be withheld if deemed to be legally privileged

or protected under the state's Government Records Access and Management Act (GRAMA), or if the record is sealed according to the Open and Public Meetings statute.

R137-1-21. The Evidentiary/Step 4 Adjudicatory Procedures.

- (1) Authority of the CSRO Hearing Officer/Presiding Officer. The CSRO hearing officer/presiding officer is authorized to:
 - (a) serve as the presiding officer at evidentiary/step 4 hearings as set forth at Subsection 63G-4-103(1)(h)(i) of the UAPA;
 - (b) maintain order, ensure the development of a clear and complete record, rule upon offers of proof, receive relevant evidence, and assign the burden of proof according to Subsection 67-19a-406(2);
 - (c) set reasonable limits on repetitive and cumulative testimony and sequester any witness whose later testimony might be colored by the testimony of another witness or any person whose presence might have a chilling effect on another testifying witness;
 - (d) rule on any motions, discovery requests, exhibit lists, witness lists and proposed findings;
 - (e) require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;
 - (f) compel testimony and order the production of evidence and the appearance of witnesses;
 - (g) admit evidence that has reasonable and probative value; and
 - (h) reopen the evidentiary record.
- (2) Conduct of Hearings. A hearing shall be confined to those issues related to the subject matter presented in the original grievance statement.
 - (a) An evidentiary proceeding may not be allowed to develop into a general inquiry into the policies and operations of an agency.
 - (b) An evidentiary proceeding is intended solely to receive evidence that either refutes or substantiates specific claims or charges. A proceeding may not be used as an occasion for irresponsible accusations, general attacks upon the character or conduct of the employing agency, agency management, or other employees. A hearing may not be used as a forum for making derogatory assertions having no bearing on the claims or specific matters under review.
- (3) Evidentiary/Step 4 Hearing. An evidentiary/step 4 hearing shall be a hearing on the record according to Subsections 67-19a-406(1) and (2), held de novo, with both parties being granted full administrative process as follows:

- (a) The CSRO hearing officer shall first make factual findings based solely on the evidence presented at the hearing without deference to any prior factual findings of the agency. The CSRO hearing officer shall then determine whether:
 - (i) the factual findings made from the evidentiary/step 4 hearing support with substantial evidence the allegations made by the agency or the appointing authority, and
 - (ii) the agency has correctly applied relevant policies, rules, and statutes.
 - (b) When the CSRO hearing officer determines in accordance with the procedures set forth above that the evidentiary/step 4 factual findings support the allegations of the agency or the appointing authority, then the CSRO hearing officer must determine whether the agency's decision, including any disciplinary sanctions imposed, is excessive, disproportionate or otherwise constitutes an abuse of discretion. In making this latter determination, the CSRO hearing officer shall give deference to the decision of the agency or the appointing authority. If the CSRO hearing officer determines that the agency's penalty is excessive, disproportionate or constitutes an abuse of discretion, the CSRO hearing officer shall determine the appropriate remedy.
- (4) Discretion. Upon commencement, the CSRO hearing officer shall announce that the hearing is convened and is being held on the record. The CSRO hearing officer shall note appearances for the record and note the party having the burden of moving forward first.
 - (5) Closing the Record. After all testimony, documentary evidence, and arguments have been presented, the CSRO hearing officer shall close the record and terminate the proceeding, unless one or both parties agree to submit a posthearing brief or memoranda of law within a specified time.
 - (6) Posthearing Briefs. When posthearing briefs or memoranda of law are scheduled to be submitted, the record shall remain open until the briefs or memoranda are exchanged and received by the CSRO hearing officer and incorporated into the record, or until the time to receive these submissions has expired. After receipt of posthearing documents, or upon the expiration of the time to receive posthearing documents, the case is then taken under advisement, and the period commences for the issuance of the written decision.
 - (7) Findings of Fact, Conclusions of Law. Notwithstanding R137-1-21(1)(h) above, following the closing of the record, the CSRO hearing officer shall write a decision containing findings of fact and conclusions of law according to Section 67-19a-406 and Section 63G-4-208 of the UAPA, which is incorporated by reference. When the CSRO hearing officer's decision and order is filed with the administrator it then becomes the decision and order of the evidentiary/step 4 hearing.
 - (8) Distribution of Decisions. The administrator shall distribute copies of the evidentiary/step 4 decision and order to the persons, parties and representatives of record.

- (9) Past Work Record. In those proceedings where a disciplinary penalty is at issue, the past employment record of the employee is relevant for purposes of either mitigating or sustaining the penalty when substantial evidence supports an agency's allegations.
- (10) Compliance and Enforcement. State agencies, department heads, division directors and officials are expected to comply with decisions and orders issued by the CSRO hearing officer. Enforcement measures available to the CSRO include:
- (a) petitioning the governor, who may remove his appointed state officers with or without cause, and with respect to those who can only be removed for cause, refusal to obey a lawful order may constitute sufficient cause for removal;
 - (b) a mandamus order to compel the official to obey the order;
 - (c) the charge of a Class A misdemeanor according to Section 67-19-29; and
 - (d) seeking enforcement of a legal decision, order or ruling through civil enforcement in the district court according to Subsection 63G-4-5-1(1) of the UAPA which is incorporated by reference.
- (11) Rehearings. Rehearings are not permitted.
- (12) Reconsideration.
- (a) Section 63G-4-302 of the UAPA is incorporated by reference within this rule, and requests for reconsideration of an evidentiary/step 4 decision will be conducted in accordance with that section, except for the time period which is stated below.
 - (b) The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the evidentiary/step 4 decision. The same CSRO hearing officer shall decide the propriety of a reconsideration. A request for reconsideration is filed with the administrator. To be timely the written request for reconsideration shall be filed within ten working days upon receipt of the evidentiary/step 4 decision according to the time period at Subsection 67-19a-407(1)(a)(i), not Section 63G-4-302.
- (13) Appeal to the Utah Court of Appeals. To appeal to the Utah Court of Appeals, a party must file with the court within 30 calendar days from the date of issuance of the evidentiary/step 4 decision and final agency action according to Sections 63G-4-401 and 63G-4-403 of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.
- (14) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the evidentiary/step 4 decision. The CSRO may not share any cost for a transcript or transcription of the evidentiary/step 4 hearing.

R137-1-22. Declaratory Orders.

This rule provides a procedure for the submission and review of requests for and disposition of declaratory rulings pertaining to the applicability of statutes, administrative rules, and orders either governing or issued by the administrator, the previous Career Service Review Board or a CSRO hearing officer. Section 63G-4-503 of the UAPA is incorporated by reference.

- (1) **Applicability.** The applicability of a declaratory order refers to the determination of whether a statute, rule, or order should be applied, and if so, how the law should be applied to the facts.
- (2) **Petition Procedure.** Any person or agency with proper standing may petition for a declaratory ruling.
 - (a) The petition must be addressed and delivered to the CSRO.
 - (b) The petition shall be date-stamped upon receipt in the CSRO.
- (3) **Petition Form.** The petition shall:
 - (a) be clearly designated as a request for a declaratory order;
 - (b) identify the statute, rule, decision or order to be reviewed;
 - (c) describe the circumstances in which applicability is to be reviewed;
 - (d) describe the reason or need for the applicability review;
 - (e) include an address and telephone number where the petitioner can be reached during regular work days; and
 - (f) be signed by the petitioner.
- (4) **Petition Review and Disposition.** As appropriate the administrator:
 - (a) shall review and consider the petition;
 - (b) shall prepare a declaratory ruling, stating:
 - (i) the applicability or nonapplicability of the statute, rule, or order at issue;
 - (ii) the reasons for the applicability or nonapplicability of the statute, rule, decision or order; and
 - (iii) any requirements imposed on a petitioning person or agency, or any other person according to the ruling; and
 - (c) may:

- (i) interview the petitioner or the agency representative;
 - (ii) hold a public hearing on the petition;
 - (iii) consult with legal counsel or the Attorney General; or
 - (iv) take any action that the administrator deems necessary to provide the petition with an adequate review and due consideration.
- (5) **Time Period and Issuance.** The administrator shall prepare the declaratory ruling without unnecessary delay. The CSRO shall issue a copy of the ruling to the petitioner by depositing it with the U.S. Postal Service, postage prepaid, or by depositing it with State Mail and Distribution Services, by faxing it or E-mailing it, as appropriate. In the event of a necessary delay, the CSRO must issue a notice of progress to the petitioner within 30 days of receipt of the petition.
- (6) **Records.** The CSRO shall retain the petition and the original of the declaratory ruling in its records.
- (7) **Statutory Construction.** Questions requiring the construction of statutory provisions may be submitted to the Attorney General for a formal or informal letter opinion.
- (8) **Refusal.** The administrator may refuse to issue a declaratory order if the question in issue is one that is being contested in a case currently before the CSRO.

R137-2. Government Records Access and Management Act.

R137-2-1. Purpose.

The purpose of this rule is to provide procedures for access to government records of the Career Service Review Office.

R137-2-2. Authority.

The authority for this rule is found in Sections 63G-2-204 of the Government Records Access and Management Act (GRAMA) and 63A-12-104 of the Utah Administrative Services Code.

R137-2-3. Definitions.

- A. "Administrator" means the Administrator of the Career Service Review Office as set forth at Sections 67-19a-101(1) and 67-19a-204.
- B. "CSRO" means the Career Service Review Office.
- C. "GRAMA" means the Government Records Access and Management Act as enacted by the 1992 Utah Legislature, Sections 63G-2-101 through 901, Utah Code Annotated.

- D. "Records Officer" means the individual responsible to fulfill Section 63G-2-103(25) of the GRAMA.

R137-2-4. Records Officer.

- A. The records officer for the CSRO shall be the administrative assistant.
- B. The records officer shall review and respond to requests for access to CSRO records, according to Section 63A-12-103.

R137-2-5. Requests for Access.

- A. Requests for access to CSRO records shall be in writing and must include the requester's name, mailing address, daytime telephone number if available, and a brief but reasonably specific description of the records being requested. A records access form may be obtained from the CSRO upon request, but this form is not required in order to petition for access to CSRO records.
- B. Requests should be directed to the Records Officer, Career Service Review Office, 1120 State Office Building, Salt Lake City, UT 84114.
- C. The CSRO is not required to respond to requests submitted to the wrong person, agency or location within the time limits set by the GRAMA.

R137-2-6. Fees.

- A. Reasonable fees may be charged for copies of records provided upon request. Fees for photocopying may be charged as authorized by Section 63G-2-203. A fee schedule may be obtained from the CSRO office by telephoning 801-538-3048 or by making a personal inquiry at the office during regular business hours.
- B. The CSRO may require payment of past fees and future fees before beginning to process a request if fees are expected to exceed \$50.00, or if the requester has not paid fees from previous requests.

R137-2-7. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63G-2-203(4). Requests for application of a waiver of a fee may be made to the CSRO records officer.

R137-2-8. Requests to Amend a Record.

- A. An individual may contest the accuracy or completeness of a document pertaining to the requester, pursuant to Section 63G-2-603. Requests to amend a record shall be processed as informal adjudications under the Utah Administrative Procedures Act. All requests to amend a record must include the requester's name, mailing address, daytime telephone

number if available, and a brief but reasonably specific description of the record to be amended.

- B. Adjudicative proceedings concerning requests to amend a record or records under the GRAMA shall be informal adjudicative proceedings and shall comply with Section 63G-2-401 et seq.

R137-2-9. Time Periods under GRAMA.

The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R137-2-10. Appeal of Agency Decision.

- A. If a requester is dissatisfied with the CSRO's initial decision, the requester may appeal that decision to the CSRO administrator under the procedures of Section 63G-2-401 et seq.
- B. A person may contest the accuracy or completeness of a document pertaining to that individual according to Section 63G-2-603. The initial request must be made to the CSRO administrative assistant. An appeal from the CSRO administrative assistant's decision may be made to the CSRO administrator under the procedures of Section 63G-2-603.
- C. Appeals of requests to amend a record shall be informal adjudications under the Utah Administrative Procedures Act.

R137-2-11. Request for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed by GRAMA under Section 63G-2-202(8). Requests for access to such records for research purposes may be made directly to the CSRO records officer.

LOWER LEVEL TIME FRAMES OF THE GRIEVANCE AND APPEAL PROCEDURES

Steps 1 - 4

Timeliness: 20 working days from the event or from knowledge of the event giving rise to the grievance, but in no circumstance more than one year afterwards.

Step 1: A career service employee who has a grievance shall submit the grievance in writing to the employee's supervisor and to the Career Service Review Office Administrator. The employee's immediate supervisor has five working days to respond in writing. The employee then has ten working days after receiving the supervisor's response or from the date the response was due to advance the grievance to the Agency or Division Director.

Step 2: The Agency/Division Director has five working days to respond in writing to the employee's grievance. The employee then has ten working days after receiving the supervisor's response or from the date the response was due to advance the grievance to the Department Head.

Step 3: The Department Head/Executive Director/Commissioner, or designee, has ten working days to respond in writing. If the employee is dissatisfied with the Department/Agency Head's written decision or if the Department/Agency Head fails to respond within ten working days after submission, the employee then has ten working days to file a written request with the Administrator of the CSRO for an evidentiary level/step 4 hearing.

Disciplinary Action Imposed by Department Head:

The aggrieved employee has 20 working days to file an appeal with the Administrator in the CSRO upon receipt of the Department Head's written decision.

Reduction in Force Grievances:

The aggrieved employee has 20 working days to file a grievance with the Administrator in the CSRO based upon the Department Head's final written decision.

Discrimination Complaints:

After a complaint of legally prohibited discrimination is filed, the Department Head has ten working days to reply in writing. After receiving the reply or upon failing to receive a reply, the Complainant may then directly petition the Utah Antidiscrimination and Labor Division, State Labor Commission.

GLOSSARY

Words Used in Administrative Proceedings

Admission: A statement (including an action or omission) that is inconsistent with a party's interest, defense, or allegation, which may be offered against that party to prove or disprove a material fact.

Allegation: An assertion made by a party in a legal/administrative proceeding, which the party tries to prove.

APA: Administrative Procedures Act.

Arbitrary: An act performed capriciously; done without adequate determining principle; not done according to sound reason or judgment; depending on will alone, without fair, solid, and substantial cause. (See Capricious.)

Arguendo: For purposes of making an argument, a presumption that certain facts or principles are true.

Argumentative Question: A question not intended to elicit facts but rather to present or create an argument.

Bona fide: In good faith; legally valid; without deceit or fraud.

Capricious: Motivated or acting on whim or impulse; unpredictable. (See Arbitrary.)

Character Evidence: Evidence about a person's traits or qualities, usually offered through opinion testimony or testimony as to reputation.

Circumstantial Evidence: Evidence which is of an indirect nature from which the existence or nonexistence of a material fact may be inferred. (Compare with Direct Evidence.)

Collateral Estoppel: A legal doctrine holding that legal and factual issues that were resolved in one proceeding may be viewed as conclusively established in a later proceeding under certain circumstances. For example, an employee's prior criminal conviction may estop that employee from denying the factual basis of the criminal proceeding. (Compare with Res Judicata.)

Competency: The presence of those characteristics (or the absence of those disabilities) that render a witness legally fit and qualified to give testimony. Applies in a similar sense to documents or other objects of evidence. Describes evidence that is admissible by the hearing officer in determining questions of fact. Competency relates to the personal qualifications of the witness; credibility relates to the witness's truthfulness.

Corroborating Evidence: Evidence supplementary to evidence already submitted and tending to strengthen and confirm it.

Credibility: Believability.

Culpable: Responsible for wrong or error; deserving censure; blameworthy.

Cumulative Evidence: Evidence that tends to establish the same point that other evidence has been offered to prove.

Demeanor: Outward behavior; conduct; manner.

Direct Evidence: Evidence that directly proves or tends to prove a fact, without any inference or presumption. (Compare with Circumstantial Evidence.)

Dismissal With Prejudice: Dismissal of a grievance which bars the party from later filing on the same subject matter.

Dismissal Without Prejudice: Dismissal of a grievance which does not bar the party from later filing on the same subject matter.

Due Process of Law: The basic protection of a person's constitutional rights through established procedures to ensure proper and fair administration of justice. Examples of such procedural rights are: advance written notice of proposed action; opportunity to respond to that proposal; a fair hearing; opportunity to confront and cross-examine witnesses; a reasoned decision; and the right to judicial review.

Egregious: Exceptionally negative. Remarkably bad.

Et Seq.: The Latin abbreviation for "et sequentia" which means "and the following."

Evidence: All the means through which any alleged fact is either proven or disproven.

Exculpate: To prove innocent, free from blame or guilt or liability; to absolve or exonerate.

Ex Parte: On one side only; by or for one party; on the application of one party.

Expert Witness: A person who, by virtue of sufficient knowledge, skill, and experience in a specific field or calling, is able to draw inferences from facts that a trier of fact may not be able to draw. (See also Opinion testimony.)

Frivolous: Clearly insufficient on its face. Of little weight or importance.

Harmful Error: Error which, in its absence or cure, might have caused a conclusion different from the one reached. The burden is upon the appellant to show that based upon the record as a whole the error was harmful, i.e., caused substantial harm or prejudice to that party's rights.

Immaterial: Unimportant; insignificant.

Impeach: To discredit, to challenge the credibility (believability) or a witness.

Inter Alia: "Among other things."

Leading Question: A question that suggests the answer desired by the questioner.

Material: Significant: important.

Merits: The strict legal rights of the parties at stake in the case, excluding jurisdictional or technical aspects; the factual substance of a case as distinguished from its form and procedural aspects.

Mitigation (of a penalty): The evidentiary level's reduction of an agency-imposed penalty to one less severe after consideration of all mitigating and aggravating factors.

Moot: Deprived of practical significance; merely academic. When a controversy no longer exists or when a determination cannot have any practical effect on the existing controversy.

Nexus: Logical connection or link. A rational connection between an identified act of misconduct and the resultant disciplinary penalty; which may consider the employee's ability to perform his or her duties, or the agency's ability to carry out its mission.

Opinion Testimony: Testimony of a witness (usually an expert) regarding conclusions drawn from facts. (See also Expert Witness.)

Prejudice: Harm, as in prejudice to one's rights. Bias, as in a display of prejudice by a witness or by the presiding official. (See Dismissal With prejudice and Dismissal Without Prejudice.)

Prima Facie: At first sight; on the face of it.

Prima Facie Case: Evidence and argument, submitted by the party with the **Burden of Proof**, which establishes (by sufficient proof) all the elements of the case, and that, if un rebutted, will entitle that party to a favorable finding.

Privileged Communications: Oral or written communications which, because of their nature or because of the people to whom they are made, cannot be divulged or placed into evidence without an express or implied waiver of the applicable privilege.

Probative: Tending to prove, substantiating.

Progressive Discipline: A concept of providing for increasingly severe penalties as offenses are repeated or accumulated. May contemplate mitigating factors and recency of occurrence.

Rebuttal Evidence: Evidence that is offered to explain or disprove facts offered into evidence by the adverse party. Also, evidence offered in opposition to a Prima Facie Case.

Recant: To withdraw or renounce a previous statement or testimony.

Res Judicata: A legal doctrine holding that a final and binding decision or a court or administrative body on the merits of a dispute between two parties precludes those parties (and certain others who are viewed as sharing a legal interest with a party) from relitigating the same dispute. (Compare with Collateral Estoppel)

Show Cause Order: An order requiring a party to show cause (explain/justify) why a certain thing should not be done or permitted. A presiding official, for example, may order a grievant to show cause why the grievance should not be dismissed as being outside the CSRO's jurisdiction.

Stipulation: Point or condition agreed upon by the parties. A stipulation is an agreement between the parties that a particular fact or set of facts is true. A stipulation satisfies a party's burden of proving the fact stipulated to.

Sua Sponte: On one's own motion; raised without prompting or suggestion. The CSRO and its hearing officers may take certain actions which a party has not requested, for reasons such as the prevention of injustice.

Substantive: An essential part or component; of or relating to what is essential.

Voir Dire: Literally "to speak the truth." A preliminary examination to test the competency of a witness. An example would be the questioning of an individual to determine his competency to testify about a particular matter.